

# Feminist Legal Realism

**T**his article begins to rethink current conceptions of two of the most significant legal movements in this country—Legal Realism and Feminist Jurisprudence. The story of Legal Realism has been retold for decades. Authors have dedicated countless books, law review articles, and blog posts to the subject. Legal and other scholars repeatedly have attempted to define better the movement and ascertain its adherents.

Although the usual suspects—Karl Llewellyn, Roscoe Pound, and Jerome Frank—are almost always a part of the conversation, surprisingly few agree on the totality of Realism’s personage or parameters. The lists of those considered realists—and there are many—are constantly expanding and contracting. The movement’s teachings and implications are ever-evaluated. In all of this alleged evolution, however, one thing has remained constant: male-centered descriptions of Legal Realism have occupied the center of the discussion.

Arguing that this master narrative should not hold, this article challenges traditional understandings of Realism. It offers a gendered account of the realist enterprise that shifts those in legal history’s margins to the mainstream. Focusing on the realistic work of one such woman, Anna Moscowitz Kross—one of the country’s first women law graduates, practicing lawyers, and judges—this article examines the work of realistic women in law during and after the realist era’s heyday.

**LOOKING BEYOND** the leading lights of the Ivy League, Ivory Tower, and prestigious courts, this account is interested in the work of women like Kross who were in community trenches and involved with the trial-court benches. Such women, who remarkably have remained under history’s radar, pressed to create their own practical jurisprudence rooted in realistic projects in the first half of the twentieth century.

Like other women of her generation, Kross did not just talk about Realism; she actually did Realism. As outsiders and reformist lawyers, Kross and her cohorts sought to address social problems they believed contributed to the oppression, marginalization, and day-to-day inequality experienced by women, families, and communities. Authentically interdisciplinary and interactive, Kross sought practical solutions



for the real issues of real people with whom she personally connected.

While her modes of operating found parallels in the work of her male realist contemporaries, they stood in stark contrast, too. Her less academically driven activities, sustained community-based efforts, and strikingly collaborative approaches differed from the heady, removed, and largely exclusionary work of male realists at the time. Even after being appointed to the bench, Kross found ways to establish agency without entirely adopting the hierarchical and traditional norms of the institutions in which she worked.

Accordingly, her realist legal work—its values, practices, and goals—can be seen as a feminist enterprise. Thus, it can serve to shed new light not only on traditional understandings of realism, but also on feminism. This new history not only offers an account of women as realists, but of realists as activists.

**IN THIS WAY**, this article serves as a two-way mirror—reflecting on our realist past while looking into our feminist future. It suggests that those who are currently grappling with the realities of feminism and the law—particularly within the academy—may draw some lessons from the life and experiences of Kross and her contemporaries. Like feminists today, in the shadows of constructed categories and lists, Kross and her cohorts also sought to establish their own agency and identities while challenging lived injustice.

And although no path is ever perfect, their generally more rooted, communal, and practical approaches to feminist concerns—through activism and not just academics, doing beyond talking—may provide a potent shot in the arm for those feeling the frustration of feminism’s limited impact on the law and its institutions as lived.

In the end, a return to on-the-ground practices and applied methods that largely focus on pragmatic improvement, inclusion, and humane connection, rather than supremacy of ideas, Ivory Tower acceptance, and ego-driven accolades, may help revive feminist projects that have become increasingly individualistic, inaccessible, and nihilistic. As such, this work suggests a new legal realist history, as well as a new feminist jurisprudence agenda, one that may be called Feminist Legal Realism.

This article begins by sketching the traditional androcentric account of Realism, recounting in Part II the story of the legal realists that focuses on men within the academy and elite courts “searching” for a more practical jurisprudence during the 1930s and 1940s. It explains, however, that despite the group’s purported focus on the pragmatic, its methods were largely removed from real-world experience. And in the course of their intellectual debates, its adherents often engaged in biting critiques that prevented cohesion and forward movement. These features contributed to the program’s less-than-stellar showing, which left much of its work unfinished.

Part III describes how the traditional tale has continued with later critical legal movements—also allegedly committed to change—picking up where the known realists left off. For instance, the Law and Society movement of the 1950s and 1960s is well known as Realism’s first offspring. Critical Legal Studies, which emerged in the 1970s, is considered the progenitor of Law and Society. And Feminist Jurisprudence, it is said, was born of Critical Legal Studies in the 1980s, providing an additional layer in the standard genealogy.

**WHILE ALL OF THESE** movements also sought to deconstruct legal norms and engage in reformatory efforts, like the traditional realists, their members—as if part of an unbroken familial cycle—repeatedly returned to impractical practices of the realist campaign. By retreating to the Ivory Tower, removing themselves from the real world and engaging in wars of words, members of these movements largely worked to reify some of the very structures they sought to challenge.

Part III posits that such replication of hegemonic norms is particularly puzzling in the case of feminists who pledged at the outset of their activities to embrace context, build community, and address lived inequality, while spending a great deal of time expressly distancing themselves from the traditional realists. Indeed, the Feminist Jurisprudence camp sought to reject

connections to the realists, arguing they were not part of the same male lineage. Rather, the realist movement was seen by legal feminists as insufficiently radical in its methods and unsuccessful in bringing about real change. In all of this protest, however, legal feminists have failed to consider the possibility of another account of the realist experience—one that acknowledges the work of radical realist women who did change systems and lives.

Part IV begins to offer this alternative account, recovering the history of one forgotten woman in law—Anna Moscowitz Kross. A lawyer, judge, and public official, Kross was part of the realist enterprise working from outside of the law’s elite institutions. But like other women who were engaged in such efforts, she was left off of Realism’s lists and out of legal history’s canon. I argue that her work, and the work of others like her, should be seen as Feminist Legal Realism.

In Part V, I explore some of the implications of this new narrative, suggesting that feminist legal history may serve as an important site of activism not only by rewriting the past of legal movements in this country, but also by helping us to rethink the future. Feminist Legal Realism may offer today’s legal feminists a new way of working for transformation, encouraging them to abandon mere debates about words on paper and unkind attacks on fellow legal feminists. Rather, by embracing Feminist Legal Realism’s commitment to action and activism, contemporary legal feminists may find a new line to their lineage as well as a way forward. ■■■

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